

WAIVER OF SERVICE OF SUMMONS

TO: Hank Bates, Attorney for Plaintiffs

I, David H. Gunning, named defendant, acknowledge receipt of your request that I waive service of a summons in the case of Brack Collins, et al. v. Roger Manning, et al., case number CV-05-10059, in the United States District Court for the USDC-District of Massachusetts. I also have received a copy of the complaint in the action, two copies of this form, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure.

I will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me if an answer or motion under Rule 12 of the Federal Rules of Civil Procedure is not served upon you within sixty (60) days after February 15, 2005, or within ninety (90) days after that date if the request was sent outside the United States.

3/8/05 Carisa A. Klemeyer, counsel for David H. Gunning
Date Printed/Typed Name


DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Federal Rule of Civil Procedure 4 requires certain parties to cooperate in avoiding unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

The fact that a party believes (i) that the complaint is unfounded, (ii) that the action has been brought in an improper place, or (iii) that the action has been brought in a court that lacks jurisdiction over the subject matter of the action or over its person or property, does not constitute good cause for failure to waive service. Parties who waive service of summons retain all defenses and objections (except any relating to the summons or to the service of the summons) and later may object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must serve, within the time specified on the waiver form, on the plaintiff's attorney or plaintiff pro se a response to the complaint, and file a signed copy of the response with the court. If the response is not served within this time, a default judgment may be taken against that defendant.